for three persons — Ong Toon Chew (No. 8 on the list), Edmund Lee (No. 17 on the list) and David (No. 18 on the list). The $200 against the name of Ong Toon Chew was a loan to Ong Toon Chew by him. The $8 against the name of Edmund Lee and the $16 against the name of David were for dance coupons which he had sold to these two persons. He said he owed money to Nos. 1 to 12 excluding No. 8 on the list and that Nos. 13 to 26, excluding Nos. 17 and 18, owed money to him.

Ex. P1AJ and Ex. P1AH are two I.O.U. chits for $272 dated 23rd January 1969 and for $215 dated 13th December 1968 respectively. Vimalacone said that these two I.O.Us. were signed by John Ong Tat Seng for money which John Ong Tat Seng had lost to him in gambling.

Now, John Ong Tat Seng was called to give evidence and he confirmed that Ex. P1AJ and P1AH were signed by him and that they were given for monies due by him to Vimalacone for gambling.

The bundle Ex. P1A consists of eight I.O.Us. and Ex. P1B consists of two I.O.Us. Vimalacone said that all these I.O.Us. were given to him by friends who had lost money to him in gambling. He drew the court's attention to one I.O.U. in Ex. P1A which reads: I owe you $100 on the 17th March 1969 due to bad luck O.K."

I now come to the bundle of nine cheques Ex. P2. Vimalacone said this about these cheques:

"I have a friend Victor Goh who last year sometime round about October wanted some money from me in the region of $1,700. I gave him cash $1,700 and later asked him for security. A week later he gave me seven cheques some bearing my name and some in cash. Just prior to his leaving for the Federation in December he gave me another cheque. The total value of these cheques was $1,700. He went to the Federation on business trip and said he would return soon and repay me the whole amount. Somewhere in mid-January this year he returned and gave me $300. He left for the Federation again towards the end of the month. Prior to leaving he said that he would repay the whole sum when he returned the following month in February. However he was not able to come back to Singapore in February and only returned in latter part of April this year and paid me the whole sum. He asked me for the return of those cheques but I told him they were in the hands of the C.P.I.B. He wanted me to hand back the cheques to him as soon as possible.

This cheque S. 175197 was given to me by somebody else, a friend who lost in gambling."

According to Vimalacone he held 12 I.O.U. chits totalling $1,763 and one cheque for $220 in respect of gambling debts. I did not think that Vimalacone, who is only an overseer drawing a salary and allowances amounting to $400 and $450 p.m., was such a heavy gambler as he claimed to be. John Ong Tat Seng is only a hawker's liaison officer and I was of the view that it was highly improbable that he would gamble and lose sums of $272 and $215. It appeared to me to be most probable that these I.O.Us. and the cheque were given by these people for loans that were made to them and that the list Ex. P1AB was a list of persons to whom money had been lent.

Vimalacone's story that the eight cheques totalling $1,700 were given to him by Victor Goh was in my view highly improbable. It appeared to me most probable that these cheques were given by the persons who drew the cheques for loans which were made to them.

It was clear that Vimalacone was in no position to make these loans.

Ex. P1AK was not claimed by the defendant or his son. It is a list showing eleven dates and sums of money against each date. The dates are from 30th April 1968 to 26th December 1968 and the sums range from $110 to $220. This document was found together with the I.O.Us. Ex. P1A in a cabinet in the dining room.

I was of the view that it was most probable that the documents seized from the defendant's house and produced in court related to the moneylending transactions of the defendant.

There was sufficient evidence to show that there was some degree of system and continuity in the defendant's moneylending transactions. On the evidence adduced before me I was of the opinion that it was more probable than not that the defendant was carrying on a business of moneylending at the time he made the loan to the plaintiff and the defendant had therefore not discharged the onus that was on him.

It was not disputed that the defendant did not hold a licence to carry on a moneylending business.

It was submitted on behalf of the defendant that even if the defendant was an unlicensed moneylender, by section 15 of the Ordinance the transaction between the defendant and the plaintiff was not void but merely unenforceable. I did not agree with that submission.

By section 8 of the Ordinance it is an offence to carry on a business of moneylending without a licence. Consequently the moneylending transaction between the parties in this case is unlawful and void and can confer no rights and is not merely unenforceable: (See *Cornelius* v. *Phillips*[1]).

For these reasons I gave judgment for the plaintiff.

Judgment for the plaintiff.

Solicitors: *M. P. D. Nair; S. Gunaratnam & Co.*

LIOW ENG GIAP v. PUBLIC PROSECUTOR

[A.Cr.J. (Choor Singh J.) May 15, 1970]

[Singapore — Magistrate's Appeal No. 242 of 1969]

Criminal Law and Procedure — Sentence — Matters to be taken into consideration in imposing fine.

The appellant had been convicted of dishonestly retaining stolen property and sentenced to 6 months imprisonment. In earlier proceedings the person who stole the tractor engine, the subject of the charge, had been convicted and sentenced to 6 months imprisonment and the person who sold the engine to the appellant had been convicted of assisting in the disposal of stolen property and fined $1,000.

Held: in the circumstances of this case and in view of the sentence on the first "receiver", the sentence should be altered to a fine of $2,000 or 6 months imprisonment.

Case referred to:-

(1) *Public Prosecutor* v. *Goh Ah Moi* [1949] M.L.J. 156.

MAGISTRATE'S CRIMINAL APPEAL.

Cheng Tim Pin for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the respondent.

Choor Singh J.: In this appeal I confirmed the conviction of the appellant on a charge of dishonestly retaining stolen property and altered the sentence of six months imprisonment to a fine of $2,000 or six months imprisonment. The sentence was varied not because it was wrong in law or manifestly excessive but due to circumstances which were entirely out of the control of the learned magistrate who tried this appellant in the court below.

The facts briefly are these. One Santhamoorthi who was sent to fetch a Caterpillar tractor engine from a godown of the Port of Singapore Authority and to deliver it to Tractors Malaysia Ltd. removed the said engine from the said godown but instead of delivering it where it should have been delivered, he went and sold it to a man named Low Yoke Yong for $2,000. Low in turn sold it to the appellant for $6,800. The appellant in turn sold it for $17,000 to a man in Ipoh named Suppiah. When the said engine was delivered to Suppiah in Ipoh it was seized by the police and investigations revealed the transactions which I mentioned earlier. Suppiah had not yet paid the $17,000 to the appellant and obviously he will not do so now when he has lost the engine. Santhamoorthi pleaded guilty to theft of the engine and was sentenced to six months imprisonment. Low pleaded guilty to dishonestly receiving stolen property and was fined $1,000. The appellant was tried and convicted of dishonestly receiving stolen property and was sentenced to six months imprisonment.

Before me, it was pleaded on behalf of the appellant that in the first place the appellant has received the same sentence as that imposed on the thief and secondly, that whereas Low the first "receiver", who made a profit of $4,800 in the transaction, was let off with a fine of $1,000, the appellant who has lost $6,800 in the transaction has been ordered to undergo six months imprisonment, and that in these circumstances although the sentence cannot be labelled as excessive having regard to the nature of the crime, it is manifestly unjust having regard to the sentences imposed on the other offenders involved in the criminal transactions concerning the same engine. In my view there is some merit in this submission. As observed earlier although I consider that the sentence imposed on the appellant appears to be correct in law and not excessive when considered in the light of the facts relating to the appellant's case alone, it is relatively excessive when considered in the light of the sentences imposed on the other persons found guilty on charges relating to the same engine. I am informed that the three offenders were dealt with by different courts and that that probably accounts for the variance in the sentences imposed on the two "receivers". That may well be so but where there are no differentiating factors, as in this case, public interest demands that there should be some consistency in the imposition of sentences on accused persons committing the same or similar offences. Failure to observe this principle may, as in this case, lead to a legitimate complaint by an appellant that he has been dealt with more severely than another who committed an identical offence. It was for these reasons that I decided that the appellant should be given the option of a fine, as such an option was granted to the other "receiver". The maximum fine that a magistrate's court can impose on an accused person is $2,000. Accordingly I altered the sentence of the appellant from that of six months imprisonment to a fine of $2,000 or six months imprisonment. I am compelled to observe that the learned magistrate who imposed a fine of $1,000 on Low, the first "receiver" treated the matter very lightly. Even after paying the fine, that offender made a profit of $3,800. In determining the quantum of a fine a trial magistrate should always take into consideration the profit arising from the offence. As was observed by Pretheroe J. (as he then was) in *Public Prosecutor* v. *Goh Ah Moi*,[1] at page 156,

"if a fine is to be imposed it should be such that it will take away from the convicted offender the desire to offend in a similar manner again. Quite clearly a balance of income left in an offender's pocket after payment of a fine will have precisely the opposite effect and for a court to leave any such balance would be wrong application of the accepted principles".

As a magistrate is not empowered to impose a fine exceeding $2,000, Low, the first "receiver" should have been sentenced, in my opinion, to a term of imprisonment and had that been done, I would not have varied the sentence imposed on the appellant.

Sentence varied.

Solicitors: *Yap & Yap.*

POH KIM NGOH & ANOR. v. YAP CHWEE HOE & ANOR.

[O.C.J. (D'Cotta J.) July 9, 1970]

[Singapore — Suit No. 1160 of 1968]

Negligence — Driver of vehicle leaving ignition keys in switch after parking vehicle — Third party driving car and causing accident — Whether driver of vehicle negligent.

The first defendant in this case was employed as the driver of a Land Rover in the Public Health Department. On the day in question he parked his Land Rover in Cambridge Road in the vicinity of the Cambridge Road Market, as there was some refuse there to be removed. The first defendant left the ignition keys of the Land Rover in the switch and got out of the Land Rover to help the other crew members in removing the refuse. A short while later one of the crew members got into the Land Rover and started it. The Land Rover moved forward and collided with one Chia Peng Teow who was sitting at one of the food stalls nearby as a result of which the said Chia Peng Teow died from the injuries sustained. The plaintiffs claimed as administratrix and co-administrator of the estate of the deceased for damages for the estate and for the benefit of the dependants of the deceased who had suffered damage caused by the negligence of the first defendant, the servant or agent of the Government. It was alleged that the first defendant was negligent in leaving the vehicle unattended in a public road.